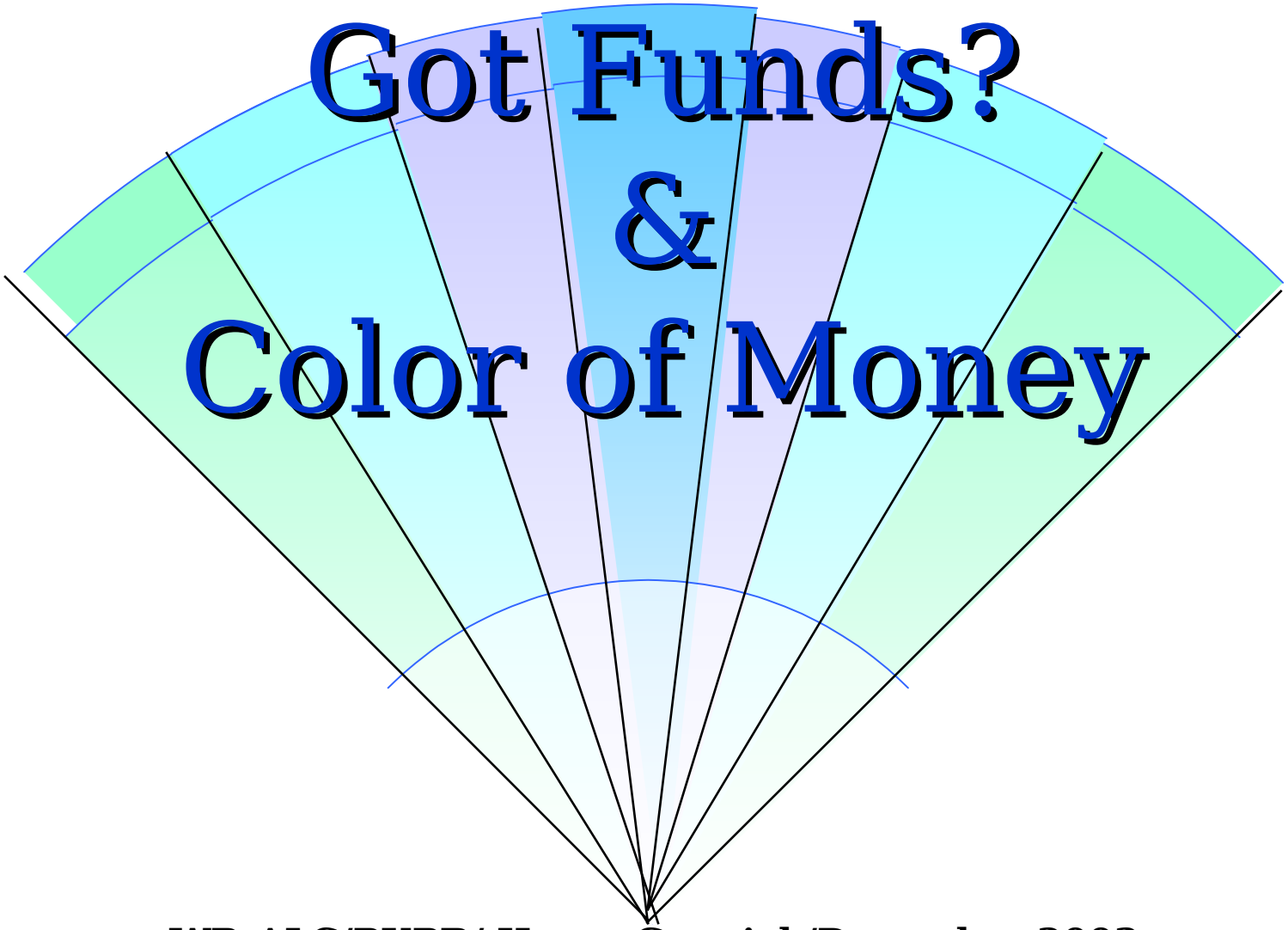
Got Funds?
&
Color of Money



WR-ALC/PKPB/ Henry Goswick/December 2003
OC-ALC/FMA/ Sonya Weaver/May 2003

Got Funds?

- Appropriated vs. Non-Appropriated
- Commitment, Obligation, and Expenditure
- Fund availability & Commitment Documents
- Aspects of Legal Availability - Purpose, Time, and Amount

Appropriated vs Non-Appropriated

- Appropriated – From Congress
- Non-Appropriated – Not from Congress

Appropriations normally authorized to Air Force Materiel Command (AFMC).

APPROPRIATION SYMBOL	FUND CODE	DESCRIPTION
3010	11	Aircraft Procurement
3011	H8	Procurement of Ammunition
3020	15	Missile Procurement
3080	17	Other Procurement
3300	25	Military Construction (MILCON)
3400	30	Operation & Maintenance (O&M)
3500	32	Military Personnel (MILPERS)
3600	29	Research, Development, Test & Evaluation (RDT&E)
7040	89	Military Family Housing Construction
7045	83	Military Family Housing O&M

Commitment, Obligation, and Expenditure

- **Commitments** are the action of administratively reserving funds to show the government's intention.

- **Obligations** are documented transactions which constitute a legal requirement for furnishing supplies or services and a corresponding requirement for the Government to pay for those items upon completion or delivery.

- **Expenditures** occur when an invoice or similar document is received and payment made against it satisfies the obligation.

Aspects of Legal Availability - Purpose, Time, and Amount

- Financial managers are concerned with the legal availability of appropriated funds. Civil and criminal penalties may be imposed on persons who incorrectly approve or use appropriated funds. Three aspects of availability must be considered when evaluating the appropriateness of a particular transaction: purpose, time, and amount.

Purpose

- The purpose of an expenditure must be one which is authorized by the appropriation made by Congress. United States Code (U.S.C.) Section 1301 states this principle: "Appropriations shall be applied only to the objects for which the appropriations were made, except as otherwise provided by law." **This provision of appropriations law is commonly referred to as propriety of funding.**

Time

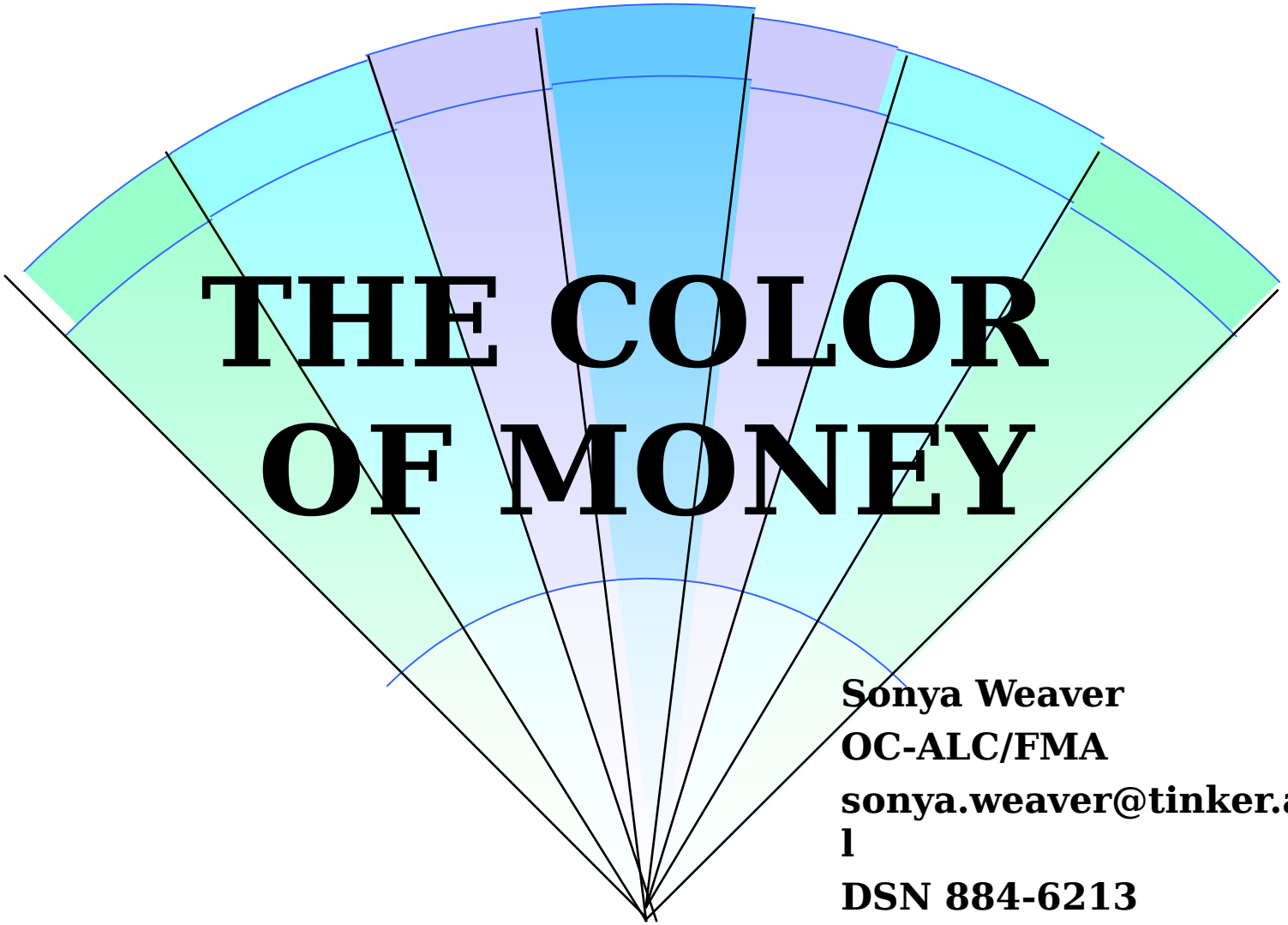
- The second parameter for establishing the legal availability of funds is time. **Often referred to as bona fide need**, the basic rule states that a fiscal year's (FY) appropriation may be obligated only to meet a legitimate bona fide need existing in the FY for which the appropriation was made. This aspect of fund availability seeks to ensure that only appropriations which are available for a specific FY are used to meet legitimate needs of that FY. The bona fide need rule applies to multiple year and annual appropriations.

Amount

- **Anti-Deficiency Act** Requires that no officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations unless otherwise authorized by law. (FAR 32.702)
  - **32.702 -- Policy.**
- No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall --
  - (a) Obtain written assurance from responsible fiscal authority that adequate funds are available or
  - (b) Expressly condition the contract upon availability of funds in accordance with 32.703-2.

Fund availability & Commitment Documents

- **Fund availability** certifications are absolutely essential. These certifications attest that funds are currently available to cover the obligation authorized by a commitment and that the authorized obligation is a proper and valid charge to the cited funds.
- **Commitment Documents**
  - **AF Form 9** – Request for Purchase
  - **AFMC Form 36** – Purchase Request
  - **AF Form 616** – Funding Authorization
  - **AFMC Form 376** – Administrative Commitment Document



THE COLOR OF MONEY

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21 May 2003

Definition…

The term “Color of Money”

is used to describe the differences between appropriated funds

Description of The Color of Money

- Complex set of financial laws and regulations
- Some basic rules that govern the use of public funds
- Won’t address every “tint and shade” of money

Is the color of money really important?

ABSOLUTELY!

To use more funds than Congress appropriated for a specific purpose and period, or to use funds for purposes other than those for which Congress intended those funds, is a violation of Public Law.

Who "Colors" the money?

The Constitution gives Congress the power of the purse (they color the money):

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law…."

Article I, section 9, clause 7

"Congress has the power to tax and spend…

Article I, section 8, clause 1

PUBLIC LAW

- The basics of appropriation law are found predominately in sections of Title 31, United States Code (U.S.C.).

- Any violation of the legal restrictions imposed by Title 31 or other statutes must be reported under provisions of DoD FMR 7000-14, Vol. 14, and regulations of the individual military services.

BASIC RULES

- When Congress provides public funds to a federal agency, it also imposes specific limitations on the use of those funds. These restrictions give appropriated funds their color. Color of money is distinguished by purpose, time and amoun

Propriety of Funds (Purpose)

- Purpose of Expenditure must be proper
  - “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” 31 U.S.C., section 1301(a)
  - Except as otherwise provided, by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.
  - As an appropriation must be derived from an act of Congress, it is up to Congress to determine the purpose for which an appropriation may be used.
  - When funds are authorized and appropriated with different limitations, the more restrictive limitation is followed.

BONA-FIDE NEED (time)

- Defines the time restriction. It says that all requirements must be funded with an appropriation enacted for obligation in the fiscal year in which the requirement occurs. This means that appropriated can only be obligated for legitimate (i.e. “bona fide”) needs of the fiscal year for which the appropriation was made.

Life Cycle of an Annual Appropriation

Phase 1 → **Phase 2** → **Phase 3**

Current	Expired	Cancelled
•Available for new obligations	•Available for payments & oblig adjustments •FY identity remains •Appropriation integrity required	•No longer available for adjustments or payments •Any adjustments and payments will be charged to current year, same approp -- limited to 1%

ANTI-DEFICIENCY (amount)

- Limits the amount available for expenditure. The Anti-Deficiency Act states that the amount appropriated by Congress for any specific purpose and period may not be exceeded. A funding deficiency occurs when the agency obligations exceed the amount Congress appropriated.

- IF YOU SPEND MORE MONEY THAN CONGRESS ALLOWED FOR A JOB, YOU HAVE COMMITTED AN ANTI-DEFICIENCY VIOLATION.

BENCHMARKS

Budget authority, obligations and outlays are the primary benchmarks and measures of the budget control system.

Forms of Budget Authority

- Appropriations: Authority in appns acts and other provisions of law provide authority to incur new obligations
- Authority to Borrow: Authority granted to a Federal entity to borrow and, to obligate the borrowed funds
- Contract Authority: Specific statutory authority to incur obligations in anticipation of either receipts or an appropriation of liquidating cash with which to pay the obligations
- Spending Authority: Offsetting collections including fees, penalties, reimbursements and revenue

Authorizing statutes usually determine the form of budget authority for a program

Types of Appropriations

- Currently, DoD has nearly 100 different appropriations available for different purposes. Appropriations are differentiated by branch of service as well as by purpose (Procurement, Research and Development, etc) and time. Reserve Components get separate appropriations.

Major DoD Appropriations

- Operations and Maintenance - used for day-to-day expenses as training exercises, deployments, utilities, civilian salaries, operating and maintaining installations, etc
- Personnel - used for military pay and allowances, permanent change of stations, initial clothing issue, etc

Major DoD Appropriations (Cont'd)

- Research, Development, Test and Evaluation (RDT&E) - used for expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance and operation of facility and equipment
- Procurement - used for production and modification of aircraft, missile, weapons, vehicles, ammunition, shipbuilding and conversion, and other items.

3-Part Test for Purpose

In response to a 1954 case involving the Department of the Interior, the Comp Gen proposed a three-part test to determine whether an expenditure is proper for the Purpose Statute

3- Part Test for Purpose

- 1. The expenditure of an appropriation must be for a particular statutory purpose, or necessary and incident to proper execution of the general purpose of the appropriation
- 2. The expenditure must not be prohibited by law.
- 3. The expenditure must not be otherwise provided for; it must not fall within the scope of some other appropriation

Necessary Expense Rule

- first part of the test

An expenditure is permissible if it is reasonably necessary to accomplish the object of an appropriation, or will contribute materially to the accomplishment of that objective.

Test for a Proper Purpose

-First Test

- To determine whether the expenditure meets the requirement of the first test we must examine 3 types of legislation:
  - Organic Legislation - this creates an agency, establishes a program or prescribes a function.
  - Appropriations Acts
  - Authorization Acts

When the language of the statute is clear

- When the language of the statute is clear, there is no need to resort to legislative history to determine Congressional intent:
  - Example (1896): "The Secretary of the Treasury.. Is hereby authorized and directed to pay George H. Lott, a citizen of Mississippi, the sum of one hundred forty-eight dollars …"

When the language is unclear...

- If the language is unclear (or will lead to an absurd result), consult the legislative history to determine the intent of the statute.
- Legislative history is the record of Congressional deliberations that precede passage of a statute. It consists of:
  - the text of the bill before enacted into law
  - conference reports - these have the greatest weight because they are voted on by both the House and Senate
  - Committee Reports

Necessary Expense Rule

(Comp Gen Decisions)

- Every item of expenditure need not be specified in an appropriation act. The spending agency has reasonable discretion…
- An appropriation made for a specific purpose is available for expenses necessarily incident to achieving that purpose…
- A necessary expense does not have to be the only way or even the best way to achieve the purpose of the appropriation…
- When new or additional duties are imposed by legislation or Exec Order and no additional appropriations are provided the current appropriation may be charged if sufficient relationship exists…

Expenditure not otherwise prohibited by law - second test

We need to determine whether the law specifically prohibits the expenditure. If so, then of course we cannot use appropriated funds for that particular purpose.

Prohibitions by Law

- Constitution
- Permanent Legislation
- Annual Appropriation Acts
- Comptroller General Decisions

Expenditure not otherwise provided for - third test

The third part of our test is to see if the expenditure is otherwise provided for in another form.

Example: O&M vs. Procurement Funds - depending on the cost of the item

Expenditures

(Comp Gen Decisions)

- A specific appropriation must be used for a particular purpose of the exclusion of a more general appropriation which is available
- General appropriations are not available to augment more specific ones
- The fact that a specific appropriation is exhausted is immaterial
- An agency may choose either of two equally and reasonable available appropriations for an expenditure not specifically mentioned in either. Once a selections is made, that appropriation must be used to the exclusion of the other.

Augmentation of Appropriations

We are prohibited from augmenting one appropriation with another by using the wrong pot of funds to pay for something that should have been rightfully paid out of another funding pot. In essence, we cannot add more money to the correct pot of funds than was there to begin with.

What exactly is Augmentation?

- When an agency performs some action that increases the amount of funds available in an appropriation.

- Augmentation violates the purpose statute. When we use funds from one appropriation to pay the costs associated with the purpose of another appropriation, we have used the first pot for an unauthorized purpose.

Statutory Exceptions to the Prohibition on Augmentation

- Economy Act authorizes reimbursements
- Revolving Funds providing working capital for operation of certain activities must be reimbursed for costs of good/services
- Donations to the government are permitted for the US as a whole but prohibited for individual agencies without statutory authority. The Sec Def may accept gifts but they may not be expended until appropriated

REVOLVING FUNDS – Working Capital Funds

- Working Capital Fund
  - Buys inventory for resell
  - Adds surcharge to recoup cost of business
  - Sells to DoD customers
- Cash from sales used to replenish inventory
- Fund designed to be self-sustaining
- Sales Critical

REVOLVING FUND - Working Capital Fund

- Supply Management Activity Group (SMAG) and Depot Management Activity Group DMAG)

- Working Capital Fund
  - Buys inventory for resell
  - Adds surcharge to recoup cost of business
  - Sells to DoD customers

- Cash from sales used to replenish inventory

- Fund designed to be self-sustaining

- Sales Critical

WORKING CAPITAL FUND FUNCTIONS

Obligation Authority

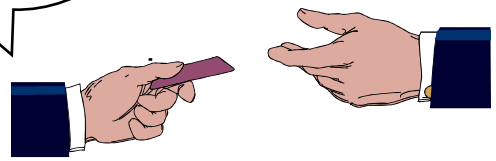
ORDERS

- **SUPPLIER**
  - VENDOR
  - GSA

Deliveries

- **INVENTORY**
  - DEPOTS
  - BASES

ISSUES



- **CUSTOMERS**
  - DEPOT
  - UNIT

PAYMENT

-Appropriated Acct

-Cost+Surcharge

CASH

What if we don't get an appropriation by 01 Oct???

- If Congress doesn't have a signed appropriation bill, they pass a Continuing Resolution Authority (CRA) to allow government agencies to continue its fiscal operations at minimum level for a specified period.

Continuing Resolution Authority Limitations

- No new starts
- Limited estimated authority
- Limited obligation levels

BA AND OUTLAY RELATIONSHIP

	Number of years new BA is available for obligation		Historical Spendout of new BA by Year (%)					
			1	2	3	4	5	6
Operations								
Military Personnel	1		95	5				
Operation and Maintenance	1		75	20	3	1		
Investment								
Procurement	3-5		20	28	26	13	6	4
Shipbuilding	*5*		*5*	*17*	*22*	*19*	*13*	*10*
RDT&E	2		47	39	9	2	1	
Military Construction	5		17	35	26	14	4	2
Total			66	20	7	3	2	1

TYPES OF SPENDING

Mandatory -- Permanent Appropriations

- Social Security
- Medicare
- Medicaid
- Federal civilian and military retirement
- Net interest

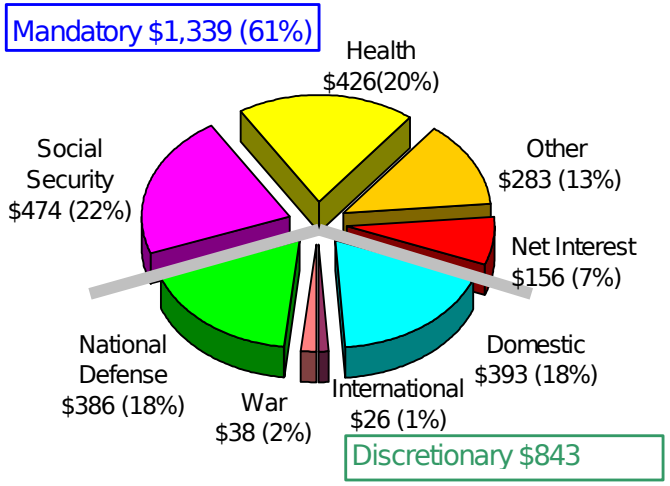
Discretionary -- 13 Annual Appropriations

- Agriculture, Rural Development, and Related Agencies
- Commerce, Justice and State, the Judiciary, and Related Agencies
- Defense
- District of Columbia
- Energy and Water Development
- Foreign Operation
- Homeland Security (New)
- Interior and Related Agencies
- Labor, Health and Human Services, Education and Related Agencies
- Legislative Branch
- Military Construction
- Treasury, Transportation, Postal Service, and General Government (Revised)
- Veterans Affairs, HUD, and Independent Agencies

ESTIMATES FOR FY 2003

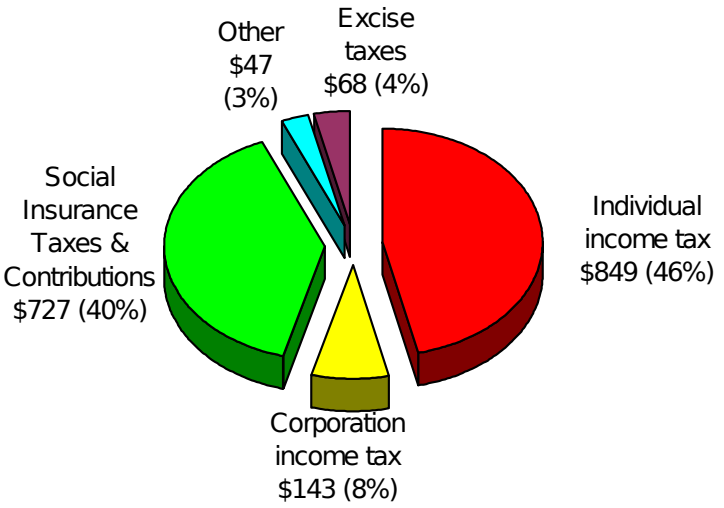
($ IN BILLIONS)

Spending: $2,182B



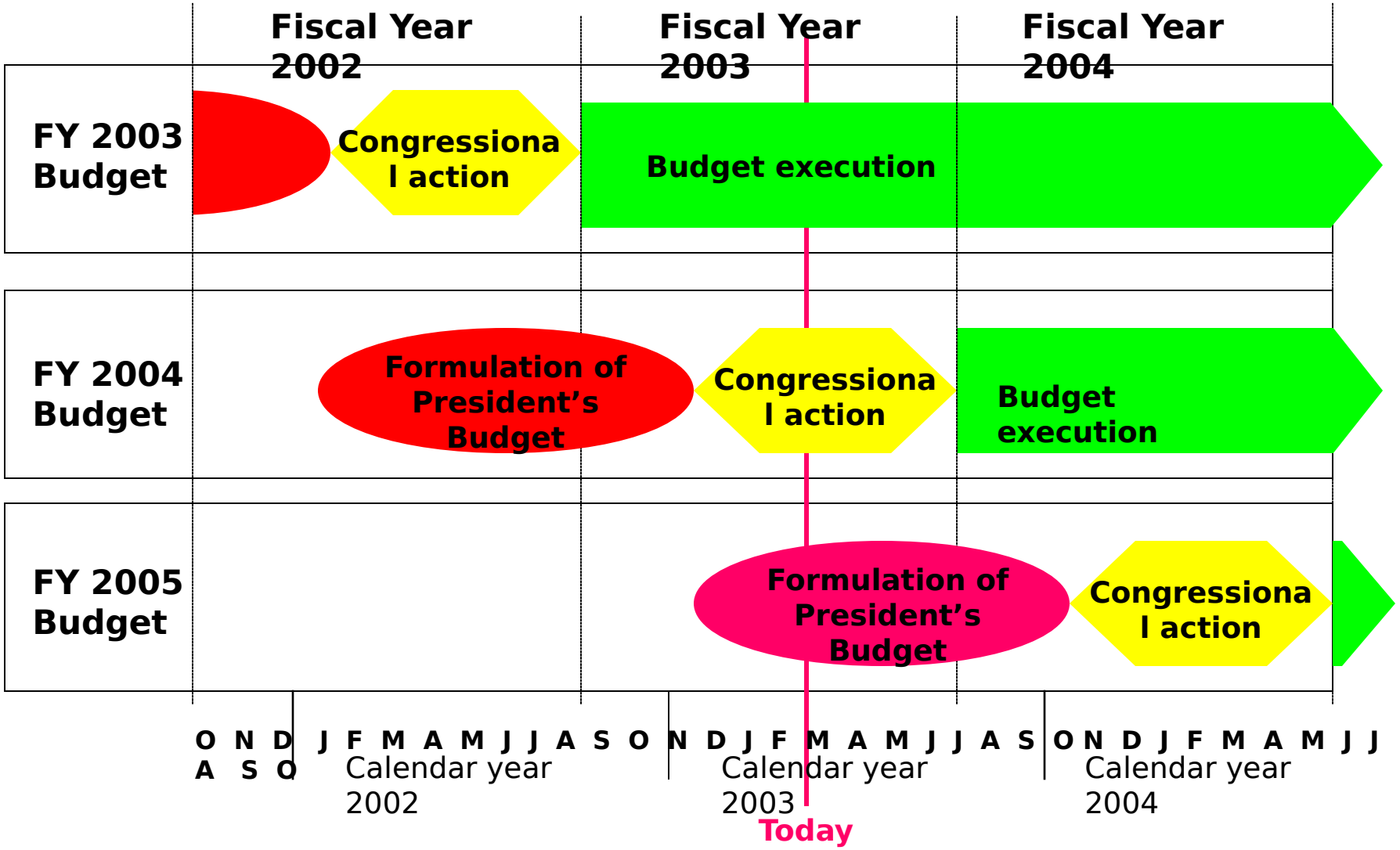
Deficit $347B

Receipts: $1,835B


Other $47 (3%)
Excise taxes $68 (4%)
Social Insurance Taxes & Contributions $727 (40%)
Individual income tax $849 (46%)
Corporation income tax $143 (8%)

Source: FY 2004 Congressional Budget Resolution

FEDERAL BUDGET PROCESS


Fiscal Year 2002
Fiscal Year 2003
Fiscal Year 2004
FY 2003 Budget
Congressional action
Budget execution
FY 2004 Budget
Formulation of President's Budget
Congressional action
Budget execution
FY 2005 Budget
Formulation of President's Budget
Congressional action
O N D J F M A M J J A S O N D J F M A M J J A S O N D J F M A M J J
A S O
Calendar year 2002
Calendar year 2003
Calendar year 2004
Today

What is the Antideficiency Act?

- Consists of provisions of law that were passed by Congress (beginning in the nineteenth century and later incorporated into Title 31 USC to prevent departments and agencies from spending their entire appropriations during the first few months of the year.

Antideficiency Act

- Prohibits entering into contracts that exceed the enacted appropriations for the year
- Prohibits purchasing services and merchandise before appropriations are enacted
- Requires OMB apportion the appropriations - approve a plan that spreads out spending over the fiscal period for which the funds were made available.
- Requires the agency head to report any violations to the President, through the OMB Director and Congress.

Ramifications of Antideficiency Violations

- If you obligate or expend more than the amount in the appropriation or fund or the amount apportioned or any other subdivision of funds, you shall be subject to appropriate administrative discipline, including
  - written reprimand
  - suspension from duty without pay
  - or removal from office

In addition….

- If you are convicted of willfully and knowingly overobligating or overexpending the amount, then you shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

Revolving Funds - any different?

- No. The incurring of obligations in excess of apportioned budgetary resources in a revolving fund is a violation of the Antideficiency Act, whether or not a fund has un-apportioned budgetary resources or non-budgetary assets greater than the amount apportioned.

Creative Financing

- Specific rules for each appropriation are different. It is a complex business, and there are “gray areas”
- Stretching the “gray areas” is asking for serious trouble
- Remember the “number one” customer of everyone in government service is the American people. We spend their money, and their representatives in Congress make the rules.

Summary

- Complex set of financial rules
- Legal foundation for obligations/expenditures of public funds is in Title 31, U.S.C.
- Purpose, Time and Amount are the 3 elements that give appropriated funds their color
- All 3 rules must be met in order to avoid a violation of the law
- Avoid trouble - follow funding rules to the letter